IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2661 OF 2003

1. Shri Arun Harishchandra Todekar)
2. Shrimati Jijabai Harischandra Todekar)
3. Shri Gurunath Harischandra Todekar)
4. Shri Vishwanath Harishchandra Todekar)
5. Shri Tarabai Harishchandra Todekar)
6. Shri Mahendra Harishchandra Todekar)
All residing at village Kopra, Post)
Kharghar, Taluka Panvel, District Raigad)..Petitioners

V/s

1. The State of Maharashtra)
through the Secretary to the)
Government of Maharashtra,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)
)
2. The Additional Collector, Raigad,)
Office of the Collector, Raigad,)
at Alibag, District Raigad)
)
3. Special Land Acquisition Officer,)
Metro Center No.3, Panvel,)
Taluka Panvel, District Raigad.)..Respondents

Mr. C.G. Gavnekar with Mr. H.S. Hiranandany for the petitioners.

Mr. P.P. Kakade, AGP for respondent Nos. 1 to 3.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 24th August, 2005.

ORAL JUDGMENT: (Per R.M.S. KHANDEPARKAR, J.)

1. Heard the learned advocate for the petitioners and the learned Assistant Government Pleader for the respondents.

2. The Petitioners challenge the award dated 16/08/2000 passed under section 28A of the Land Acquisition Act, 1894 being in contravention of the provisions of law.

3. The Petitioners' land situated at Mouje Kharghar, Taluka Panvel, District Raigad was sought to be acquired along with the land belonging to some other persons wherein those persons had preferred reference under section 18 for enhancement of the compensation being dissatisfied with the compensation awarded by the Land Acquisition Officer. The said proceedings were registered as LAR 39/85 in the court of District Judge, Raigad, Alibag. Consequent to the award passed by the Reference Court in the said LAR No.39 of 1985 on 31/12/1987 enhancing the compensation in favour of the applicants in the said proceedings, the petitioners herein filed an application under section 28A of the said Act for redetermination of the compensation in relation to their land acquired in the matter under the same notification by which the land of the applicant in LAR No. 39 of 1985 was acquired. The said application was filed on 22/03/1988. Since the said application was not decided for a long period, the petitioners approached this Court by Writ

Petition No.3379 of 1998 wherein direction was issued by this Court on 20/07/1998 to dispose of the said application under section 28A within a period of three months. Thereafter, the Land Acquisition Officer disposed of the said application under section 28A under award dated 16/08/2000. However, no notice of the said award was given to the petitioners. The Petitioners came to know about the same only on 16/03/2001, when their advocate attended the office of the Land Acquisition Officer. On perusal of the copy of the award, it was revealed to the petitioners that the claim of the petitioners for enhancement of the compensation in terms of the award dated 31/12/1987 in LAR No. 39 of 1985 was rejected solely on the ground that no change was possible in the amount which was awarded under earlier award under section 11 of the said Act. Hence, the present Petition.

4. The learned advocate appearing for the petitioners while assailing the impugned award, submitted that the impugned award apparently discloses reference to intimation by District Collector to the Land Acquisition Officer to the effect that in view of the land being already assessed in relation to the compensation payable to the petitioners while passing the award under section 11, it is not possible to

reassess the market value of such land. Obviously, the rejection of the claim of the petitioners for enhancement of compensation is totally illegal and not in accordance with the provisions of law. It is well settled that once the Reference Court enhances the compensation in relation to the land acquired under a particular notification, the interested persons in all other pieces of land covered by the same notification can approach the authorities for reference under section 28A for enhancement of the compensation awarded to such persons based on the award passed by the Reference Court. Undisputedly, in the case in hand, the petitioners had filed an application dated 22/3/1988 for enhancement of compensation on the basis of the award dated 31/12/1987 in LAR No. 39 of 1985. It is not in dispute that the petitioners' land and the land which was the subject matter of LAR No. 39 of 1985 were acquired under the same notification. Being so, the impugned award is not sustainable and is liable to be set aside and the matter will have to be remanded to the Reference Court to decide the application of the petitioners in accordance with the provisions of law.

5. The Petition, therefore, is allowed. The impugned award is hereby quashed and set aside. The matter is

remanded to the Reference Court to decide the application dated 22/03/1988 within four months from the date of receipt of the writ of this court after hearing the parties in accordance with the provisions of law.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)